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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,002	02/26/2002	Jeffrey L. Allen	47089-00040	4279

30223 7590 11/30/2004

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EXAMINER
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ONEILL, MICHAEL W

ART UNIT	PAPER NUMBER
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3713

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/083,002

Applicant(s)

ALLEN, JEFFREY L.

Examiner

Michael O'Neill

Art Unit

3713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 and 25-30 is/are pending in the application.
- 4a) Of the above claim(s) 1-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-23, 25-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Art Unit: 3713

**DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 103***

The rejections of claims 14-23 and 25-30 under 35 U.S.C. 103(a) as being unpatentable over Walker et al. '549 in view of Moody '136 is maintained from the previous Office action and incorporated herein.

***Response to Arguments***

Applicant's arguments filed 11-24-04 have been fully considered but they are not persuasive.

In sum, respectfully, the Applicant's arguments are on commensurate in scope to the claimed inventions. It needs to be noted that Applicant's claimed inventions are couched in terms of "one or more" and every limitation is an adaptation, e.g. "adapted for" language is through the claims. Thus, for the prior art of record to read on the claimed inventions, the elements of the prior art have to just show "one" of something and be capable of performing the "adaptation" functionality recited as the object to the subject. In this case, Walker shows plural gaming machines and one server and one database. This meets the limitations of "one or more" game devices; servers; and databases. Because Walker distributes prizes and

Art Unit: 3713

because there is one server, the limitation of pooling to one collective pool is met because there is only one pool because of having one server. With respect to the inapplicability of Moody because people use it for "gambling"; the claims are not close ended claims and just having the adjective "amusement" does not mean that it is inappropriate to use teaching references that involve "gambling". Many players see "gambling" has a form of entertainment; and thus, amusement. The regulatory contention is not persuasive because it is not relevant to the issue of what Moody's disclosure is being used to show. From the Office action, it can be read that Moody teaches those skilled in the art that it would be wise to have players pick their prizes over the Internet for the reasoning found in Moody and recited in the Office action, see the previous Office action. The contentions focusing of grouping based on location and collective award are not persuasive because; again, these arguments are not commensurate in scope with the breadth of the claim language. The claim language only need "one" of everything. There is no language require "a plurality" or "at least two". Thus, Walker meets the claimed invention by disclosing "one" server with "one" database. With respect to the contention that Walker does not meet the limitation of awarding prizes based on "at least one statistic being from the group of total plays, total time of

Art Unit: 3713

play and total money input"; the Examiner respectfully disagrees and again reminds the Applicant of the non-commensuration of argument to claim breadth. The reference only has to meet one of the recited limitations in a Markush grouping and the remain are deemed obvious absent a showing of criticality, usually through unexpected results. In this case, Walker is designed to meet one depending upon the set-up of the system. In Walker's system, the operator can set-up the tournament to call a winner based on total plays, e.g. the number of rounds of golf played; and/or the total time of play, e.g. the number of questions answered correctly. Therefore, Walker meets the claimed limitations found within the instant claims.

#### **Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated

Art Unit: 3713

from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael O'Neill whose telephone number is 571-272-4442. The examiner can normally be reached on Monday through Friday 8:30 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan M. Thai can be reached on 571-272-7147. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MICHAEL O'NEILL  
PRIMARY EXAMINER